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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**
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9 FELTON L. MATTHEWS, JR.,
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11 *Petitioner,*

12 vs.

13 NEVENS,
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15 *Respondent.*

2:12-cv-00236-KJD-CWH

ORDER

16 This habeas action comes before the Court on petitioner's application (#1) to proceed
17 *in forma pauperis* and for initial review of the petition. On the application to proceed *in forma*
18 *pauperis*, the Court finds that petitioner is unable to pay the \$5.00 filing fee. The application
19 therefore will be granted, subject to the proviso noted *infra*.

20 Turning to initial review, petitioner must file a petition on the Court's required § 2254
21 petition form. Petitioner filed the present petition on a form for a petition under 28 U.S.C. §
22 2241. He challenges, *inter alia*, a prison disciplinary decision allegedly leading to a loss of
23 statutory sentencing credits. The determination of whether a petitioner must proceed under
24 28 U.S.C. § 2254 rather than 28 U.S.C. § 2241 is a status inquiry directed to the source of the
25 petitioner's custody rather than the target of his challenge. *See, e.g., Shelby v. Bartlett*, 391
26 F.3d 1061, 1063-64 (9th Cir. 2004). Petitioner is in custody pursuant to a Nevada state
27 conviction. He therefore must proceed under § 2254, and he accordingly must use the
28 Court's required § 2254 form as required by Local Rule LSR 3-1.

1 IT THEREFORE IS ORDERED that the application (#1) to proceed *in forma pauperis*
2 is GRANTED such that petitioner will not be required to pay the \$5.00 filing fee.

3 IT FURTHER IS ORDERED that the Clerk of Court shall file the petition and that the
4 petition is DISMISSED without prejudice.¹

5 The Clerk shall enter final judgment accordingly, dismissing the action without
6 prejudice.

7 DATED: February 16, 2012

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KENT J. DAWSON
United States District Judge
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25 ¹The Court expresses no opinion as to whether the petition or claims therein are subject to other
26 deficiencies. *Inter alia*, the Court has analyzed the pauper application under the rules applicable to habeas
27 petitions rather than those applicable to prison civil rights actions given that petitioner presents at least one
28 claim that, at least as currently alleged, may be a habeas corpus claim. Nothing herein involves any tacit
holding that all of the claims presented are cognizable in habeas corpus. Petitioner has three or more strikes
under 28 U.S.C. § 1915(g), and he therefore may not pursue a prison civil rights action without prepaying the
full \$350.00 filing fee. Nothing herein precludes a holding by the Court, in any action, that petitioner must
pursue claims presented on a habeas petition form instead in a civil rights action after additionally satisfying
all requirements of the Prison Litigation Reform Act.